

MEMORANDUM

November 16, 1983

4374

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: ZONING TEXT AMENDMENT - DEVELOPMENT IMPACT
REGULATIONS

To implement the recommendations of the Mayor's Advisory Group on the Linkage between Downtown Development and Neighborhood Housing, the Authority staff, in consultation with staff of the Mayor's office and the City Law Department, have prepared a text amendment to the Boston Zoning Code to establish procedures for requiring payment to a fund for neighborhood housing. The amendment applies city-wide to any project involving 100,000 square feet or more of new or substantially rehabilitated gross floor area (exclusive of parking garage spaces) intended to be used for office, hotel, retail business and service, or institutional uses, provided such project requires a zoning change or deviation; or to a project of the same character but to be used for uses other than those listed above, if such project would directly result in a reduction in the supply of low or moderate income housing.

A Development Impact Project Plan must contain information similar to that required for a Planned Development Area. The Plan would be reviewed first by the staff which would make its recommendations to the Authority, which would then hold a public hearing. If the Authority Board approves the project, the applicant would seek Board of Appeal relief for any zoning deviations under the procedures for variances, exceptions, or conditional uses or Zoning Commission approval of a map amendment. As a condition for the grant of zoning relief or for a map amendment, the applicant must enter into an agreement with the Authority and a Neighborhood Housing Trust, or such other trust as is established for the purpose of developing new or rehabilitated low or moderate income housing, to pay to the trust a "Housing Payment Exaction" of five dollars per square foot, such payment to be spread over a period of twelve years. There is also a provision for "in-kind" contributions, in the form of construction, by the applicant, of housing units for low and moderate income residents, costing at least as much as the Housing Payment Exaction would have cost.

Projects for which a building permit has been issued prior to notice of the Zoning Commission hearing on the amendment, projects for which construction and permanent financing have been secured prior to notice, such and projects to be owned or used by public agencies, will not be subject to the above regulations except by consent of the developer.

A draft of the proposed amendment to the Boston Zoning Code is attached. Minor changes in language may be made in the final draft, but only in substantial accord with the attached petition.

I recommend that the Authority authorize the Director to petition the Zoning Commission for an amendment to the Boston Zoning Code which is in substantial accord with the attached draft petition.

VOTED: That the Boston Redevelopment Authority hereby authorizes the Director to petition the Zoning Commission for an amendment to the Boston Zoning Code which would establish procedures and regulations for Development Impact Projects, which is in substantial accord with a draft petition submitted to the Authority at its meeting of November 16, 1983.

The Director

By adding to the Boston Zoning Code a new article as follows:

Article 25

DEVELOPMENT IMPACT PROJECTS

Section 25-1. Statement of Purpose. The purpose of this article is to create the public health, safety, convenience and welfare to prevent overcrowding and deterioration of existing housing to preserve and increase the City's housing resources, to facilitate the adequate provision of the public requirements for low and moderate income housing, and to establish the necessary balance between new, large scale real estate development and the low and moderate income housing needs created thereby, by provisions designed as follows:

1. Afford relief and regulate inappropriate real estate development projects which tend to exacerbate the current low and moderate income housing shortage, because of pressure created by new work's attracted to the jobs created by the development.

TO THE ZONING COMMISSION OF THE CITY OF BOSTON

The Director of the Boston Redevelopment Authority hereby petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956, as follows:

A. By adding to the Boston Zoning Code a new final article as follows:

"Article 26

"DEVELOPMENT IMPACT PROJECTS

"Section 26-1. Statement of Purpose. The purpose of this article is to promote the public health, safety, convenience and welfare; to prevent overcrowding and deterioration of existing housing; to preserve and increase the City's housing amenities; to facilitate the adequate provision of the public requirement for low and moderate income housing; and to re-establish the necessary balance between new, large-scale real estate development and the low and moderate income housing needs created thereby, by provisions designed to:

- "1. Afford review and regulate large-scale real estate development projects which tend to exacerbate the current low and moderate income housing shortage, because of increased demand by new workers attracted to the jobs created by the development.

- "2. Mitigate the impact on the availability of low and moderate income housing of such development by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment from the Zoning Map, to make a development impact payment to the Neighborhood Housing Trust or to construct low and moderate income housing.

"Section 26-2. Definitions.

- "1. Development Impact Project. Any development in the City of Boston in which it is proposed to erect or to substantially rehabilitate a building or structure having a gross floor area (exclusive of all accessory parking garage space) of one hundred thousand (100,000) square feet or more, or to enlarge or extend a building or structure so as to increase its gross floor area (exclusive of all accessory parking garage space) by one hundred thousand (100,000) square feet or more; which building or structure is intended for a use which use item number is listed in Table I, Section 26-3, or, for a use which use item number is not listed if such building project will directly result in the reduction in the supply of low and moderate income residential units; and which requires a variance, conditional use permit , exception or zoning map amendment.
- "2. Development Impact Project Plan. A plan for a development which qualifies as a Development Impact Project. The Plan shall set forth the proposed location and appearance of structures, open spaces

and landscaping, proposed uses of the building or buildings, densities, projected number of employees, proposed traffic circulation, parking and loading facilities, access to public transportation, proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, and such other matters as the Boston Redevelopment Authority deems appropriate to its consideration of the proposed construction. Boston Redevelopment Authority approval of the Plan is a Development Impact Project Requirement.

- "3. Development Impact Project Exaction. The payment of a sum of money by the Project applicant, which rate of payment is set forth in Section 26-3(2), below, to the Neighborhood Housing Trust or the construction, by the Project applicant, of housing units.

"(a) The Housing Payment Exaction shall be made to the Neighborhood Housing Trust in twelve (12) equal, annual installments, the first installment due upon the issuance of a certificate of occupancy for the Project building or twenty-four (24) months after the granting of the building permit, whichever comes first. However, if said Neighborhood Housing Trust has not been created at the time any such Housing Payment Exaction becomes due, the Project applicant shall make the payment to the Boston Redevelopment Authority. The Boston Redevelopment Authority shall place any payments received, on account of the Housing Payment Exaction requirement in an escrow account, to be held therein for the benefit of the Trust, until such time as the Neighborhood Housing Trust is created.

"(b) The Housing Construction Exaction requirement shall be met by the construction of housing units, for occupancy exclusively by low and moderate-income residents of the City, at a cost at least equal to the amount of the appropriate Housing Payment Exaction, and in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. The actual Housing Construction Exaction may be approved by the Authority only after public notice and hearing.

"(c) The Project applicant's entering into an agreement, with the Boston Redevelopment Authority and the Neighborhood Housing Trust to be responsible for either the Housing Payment Exaction or the Housing Construction Exaction, is a Development Impact Project Requirement.

"4. Substantial rehabilitation. To cause alterations or repairs to be made, to a building or structure, within any period of twelve (12) months, costing in excess of fifty (50) percent of the physical value of the building or structure. Physical value of a building or structure shall be based on the assessed value as recorded in the assessor's office of the City of Boston.

"5. Neighborhood Housing Trust. A Massachusetts charitable trust to be created pursuant to the Special Statutes and Ordinances of the City of Boston. The Trust will administer funds received from Project applicants by means of the Housing Payment Exaction requirement for Development Impact Projects, as well as funds received

from other sources, as specified in the Trust By-Laws. Funds will be allocated in the form of grants and loans to public and private entities to subsidize the financing, construction, rehabilitation, management, maintenance and operation of low and moderate income housing.

- "6. Public Agency. A department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth, or of the United States.

"Section 26-3. Development Impact Project Requirements. No variance, conditional use permit, exception or zoning map amendment for a Development Impact Project shall be granted, allowed or adopted unless the following requirements are met:

- "1. The Boston Redevelopment Authority, after a public hearing, shall have approved a Development Impact Project Plan. No Plan shall be approved by the Authority unless the Authority finds that the Plan conforms to the general plan for the City as a whole and that nothing in such Plan will be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- "2. The person or persons making application for a variance, conditional use permit, exception, or map amendment to erect, substantially rehabilitate, enlarge, or extend a building or structure pursuant to a Development Impact Project Plan shall also have entered into an

agreement with the Boston Redevelopment Authority and the Neighborhood Housing Trust to be responsible for a Development Impact Project Exaction.

"(a) For each use listed below, in Table I, a Housing Payment Exaction of five dollars (\$5.00) for each square foot of gross floor area in excess of one hundred thousand (100,000) square feet, shall be required. Uses, other than off-street parking, that are ancillary or accessory to the uses listed in Table 1, shall also be subject to the Housing Payment Exaction.

Table I

Use

Office (Use item numbers: 39, 39A, 40, 41, 42)

Retail Business and Service (Use item numbers: 30, 31, 32, 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 43, 44, 45, 46, 47, 48, 49, 60, 60A, 61)

Institutional and Educational (Use item numbers: 11, 12, 13, 13A, 14, 16, 17, 18, 19, 20, 20A, 21, 22, 23, 24, 29)

Hotel (Use item numbers: 15)

"(b) For mixed-use buildings or structures in which one or more of the above uses are combined, the above requirements shall apply if the gross floor area devoted to any one or more of the said uses shall in the aggregate exceed one hundred thousand (100,000) square feet. In such event, the portion of the building or structure devoted to each use shall be subject to the Housing Payment Exaction specified above, in accordance with its pro rata share of the total gross floor area of the building or structure.

"(c) The Housing Payment Exaction for the use categories listed in Table I (and for any new uses created by amendment to this Zoning Code) shall be subject to recalculation five (5) years after the effective date of this provision and every five (5) years thereafter. The Boston Redevelopment Authority, after public notice and hearing, shall make a recommendation to the Zoning Commission for the amendment of the Housing Payment Exaction, based on a consideration of the following criteria:

(i) Economic trends measured in terms of development activity, commercial rents per square foot, employment growth, and inflation rates.

(ii) Housing trends measured in terms of vacancy rates for low and moderate-income housing, and production statistics for new housing units.

The resulting analysis will determine the changes in the City's low and moderate-income housing needs and the continuing ability of new, large-scale development to assist in mitigating the housing impact caused thereby.

"(d) The Building Commissioner shall not issue any building or use permit with respect to any building, structure, or land within an area covered by a Project Plan, unless the Director of the Boston Redevelopment Authority has certified on the applica-

tion therefor, and on each and every plan, drawing or specification filed with the Building Commissioner in connection therewith, that the same have been subject to design review, and that the same are consistent with the Authority-approved Project Plan and that the applicant has entered into an agreement with the Boston Redevelopment Authority and the Neighborhood Housing Trust, as provided in Sections 26-2(3) and 26-3(2), above.

"3. The following are not Development Impact Projects and will not be subject to the Development Impact Project Requirements:

"(a) Any building or structure for which a building or use permit is lawfully issued before notice of hearing before the Zoning Commission has first been given respecting adoption of the Development Impact Project provision, provided that construction work under such a permit is commenced within six months after its issue, and the work proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances;

"(b) Any building or structure for which construction or permanent financing has been secured, as evidenced by an irrevocable written commitment of a lending institution or a recorded mortgage indenture, and by the borrower's bona fide payment of a loan commitment fee; or

"(c) Any building or structure which is, or will be, wholly-owned or used by one or more public agencies.

- B. By striking out in subsection 6-3(d), the word "and" after the semi-colon.
- C. By striking out in subsection 6-3(e), the period after the word "use", and inserting a semi-colon in place thereof, and adding at the end, the word "and".
- D. By adding to Section 6-3, after subsection (e), the following new subsection:

"(f) If such appeal relates to a Development Impact Project, as defined in Section 26-2, the applicant shall have complied with the Development Impact Project Requirements, set forth in Section 26-3."

- E. By striking out, in Section 6A-3, the word "and" at the end of subsection (a).
- F. By striking out, in Section 6A-3, the period at the end of subsection (b) and inserting a semi-colon in place thereof, and adding the word "and".
- G. By adding, to Section 6A-3, after subsection (b), the following new subsection:

"(c) if such exception relates to a Development Impact Project, as defined in Section 26-2, the applicant shall have complied with the Development Impact Project Requirements set forth in Section 26-3."

- H. By striking out, in Section 7-3 the word "and" at the end of subsection (a) and at the end of subsection (b).
- I. By striking out in Section 7-3, the period at the end of subsection (c), and inserting a semi-colon in place thereof, and adding the word "and".
- J. By adding, to Section 7-3, after subsection (c), the following new subsection:

"(d) That, if the variance is for a Development Impact Project, as defined in Section 26-2, the applicant shall have complied with the Development Impact Project Requirements, set forth in Section 26-3, except if such variance is for a deviation from said Requirements.

CHAIRMAN

VICE CHAIRMAN

In meeting of Zoning Commission

Adopted _____, 1983

Secretary

